

1 Albert N. Kennedy, OSB No. 821429 (Lead Attorney)

Direct Dial: 503.802.2013

2 Facsimile: 503.972.3713

E-Mail: albert.kennedy@tonkon.com

3 Timothy J. Conway, OSB No. 851752

Direct Dial: (503) 802-2027

4 Facsimile: (503) 972-3727

E-Mail: tim.conway@tonkon.com

5 Michael W. Fletcher, OSB No. 010448

Direct Dial: (503) 802-2169

6 Facsimile: (503) 972-3867

E-Mail: michael.fletcher@tonkon.com

7 Ava L. Schoen, OSB No. 044072

Direct Dial: (503) 802-2143

8 Facsimile: (503) 972-3843

E-Mail: ava.schoen@tonkon.com

9 TONKON TORP LLP

888 SW Fifth Avenue, Suite 1600

10 Portland, OR 97204-2099

11 Attorneys for Debtors

12 UNITED STATES BANKRUPTCY COURT

13 DISTRICT OF OREGON

14 In re

Case No. 19-62584-pcm11

15 NORPAC Foods, Inc.,

16 Debtor.

17 In re

Case No. 19-33102-pcm11

18 Hermiston Foods, LLC,

19 Debtor.

20 In re

Case No. 19-33103-pcm11

21 Quincy Foods, LLC,

22 Debtor.

**DEBTORS' MOTION FOR ORDER  
AUTHORIZING PAYMENT OF  
PREPETITION WAGES, SALARIES,  
COMPENSATION, EXPENSES,  
BENEFITS, AND RELATED TAXES;  
AND TO CONTINUE EMPLOYEE  
BENEFITS POSTPETITION**

*EXPEDITED HEARING REQUESTED*

1 Debtors and Debtors-in-Possession NORPAC Foods, Inc. (“NORPAC”),  
2 Hermiston Foods, LLC (“Hermiston Foods”), and Quincy Foods, LLC (“Quincy Foods”)  
3 (together, “Debtors”) move this Court for entry of an order authorizing payment of prepetition  
4 wages, salaries, commissions, expenses, benefits, and related taxes; and to continue employee  
5 benefits postpetition. In support of this Motion, Debtors incorporate the statements contained in  
6 the Declaration of Winston Mar in Support of First Day Pleadings (the “Mar Declaration”) filed  
7 contemporaneously herewith, and further respectfully state as follows:

8 1. On August 22, 2019 (the “Petition Date”), Debtors filed voluntary  
9 petitions for relief under Chapter 11 of Title 11 of the United States Code.

10 2. Debtors have continued in possession of their property and are continuing  
11 to operate and manage their business as debtors-in-possession pursuant to Sections 1107(a) and  
12 1108 of Title 11 of the United States Code.

13 3. No request has been made for the appointment of a trustee or examiner,  
14 and no official committee of unsecured creditors has been appointed in Debtors’ cases at this  
15 time.

16 4. The Court has jurisdiction over this matter pursuant to 28 U.S.C. §§ 157  
17 and 1334. Venue is proper in this district pursuant to 28 U.S.C. §§ 1408 and 1409. This is a  
18 core proceeding pursuant to 28 U.S.C. § 157(b)(2).

19 5. NORPAC, a farmer-owned cooperative, along with its wholly-owned  
20 subsidiaries Hermiston Foods and Quincy Foods, is the largest independent, standalone  
21 processor of high-quality organic and conventional frozen vegetables and fruits in the Pacific  
22 Northwest. NORPAC owns raw processing plants in Brooks, Oregon, and Stayton, Oregon, a  
23 packaging plant and corporate headquarters building in Salem, Oregon, a harvesting operation in  
24 Hermiston, Oregon, and a raw processing, roasting, and packing plant in Quincy, Washington.  
25 Debtors have over 1,125 full-time employees along with up to 1,100 seasonal employees.  
26

1           6. Debtors have a diverse supplier base built on an extensive network of over  
2 220 contract growers made up of family-owned farms (145 farms in Oregon and 75 farms in  
3 Washington) spanning more than 40,000 acres. Debtors have long-term, established  
4 relationships with a global blue-chip customer base of over 1,250 customers, spanning the retail,  
5 foodservice, club, export, and industrial channels.

6           7. Additional information and background regarding Debtors' history, assets,  
7 structure, operations, and business are contained in the Declarations of Winston Mar and Shawn  
8 Campbell in Support of First Day Motions filed contemporaneously herewith.

9           8. Debtors pay some employees on a weekly basis and other employees on a  
10 bi-weekly basis.

11           9. The payroll paid on a weekly basis is approximately \$1,200,000 to  
12 \$1,500,000 per pay period, and the payroll paid on a bi-weekly basis is approximately \$600,000  
13 per pay period.

14           10. Debtors employ both hourly and salaried employees, as follows:

15           a. NORPAC employs approximately 1,482 hourly employees and  
16 201 salaried employees. Certain of NORPAC's hourly employees are paid weekly on Fridays;  
17 other of NORPAC's hourly employees and all of its salaried employees are paid bi-weekly every  
18 other Friday.

19           b. Hermiston Foods employs approximately 29 hourly employees and  
20 3 salaried employees. Hermiston Foods' employees are all paid bi-weekly every other Friday.

21           c. Quincy Foods employs approximately 323 hourly employees and  
22 28 salaried employees. Quincy Foods' employees are all paid bi-weekly every other Friday.

23           d. Payrolls are initiated on Wednesday of each week. Debtors'  
24 payments to employees are made via either electronic transfer or paper check. On Wednesday of  
25 each week the Debtors issue payment to those receiving electronic transfer by initiating the  
26 electronic transfer and print checks for those who are paid by check. The checks are delivered to

1 Debtors' facilities on Thursday for distribution on Friday.

2 11. Employees who are paid weekly have been paid their wages for the pay  
3 period August 4, 2019 through August 10, 2019. Employees who are paid on a bi-weekly basis  
4 have been paid for the pay period ending on August 3, 2019. Because the Petition Date is  
5 August 22, 2019, Debtors have incurred unpaid prepetition obligations for wages, salaries,  
6 expenses, commissions, and other employment compensation and benefits for the period August  
7 3, 2019 to August 21, 2019.

8 12. The total amount Debtors are obligated to pay for accrued and unpaid  
9 prepetition wages, salaries, expenses, commissions, compensation, taxes, and benefits for the  
10 period August 3, 2019 to August 21, 2019 is approximately \$2,323,832.04 for over 2,000  
11 employees. No individual is owed more than \$12,850 for prepetition wages, salaries,  
12 commissions, or other compensation, including benefits, and Debtors will not pay, and do not  
13 request authority to pay, any person more than the \$12,850 amount of their priority claim as  
14 provided by 11 U.S.C. §§ 507(a)(4) and (a)(5).

15 13. Those persons who receive an electronic transfer have already been  
16 transferred the funds by the Debtors. Those persons to be paid on August 23, 2019 by paper  
17 checks will be delivered those checks in the ordinary course of business on Friday, August 23,  
18 2019. Debtors seek immediate entry of this Order so that the paychecks delivered on August 23,  
19 2019 can be processed and cleared by Wells Fargo Bank, N.A. ("Wells Fargo"), the bank  
20 account from which the funds are issued.

21 14. Payroll payments are drawn on Debtors' funds held at Wells Fargo,  
22 Account Numbers ending in 9073 (NORPAC), 6125 (NORPAC), 1017 (Hermiston Foods), and  
23 1025 (Quincy Foods). Payroll funds are identified by a special check series different from  
24 checks issued for other payments.

1 **RELIEF REQUESTED**

2 15. Debtors request that this Court enter an order, pursuant and subject to  
3 Sections 105(a) and 507(a)(4) and (a)(5) of the Bankruptcy Code, authorizing Debtors to (a) pay  
4 to or for the benefit of their employees incurred but unpaid prepetition wages, salaries,  
5 commissions, reimbursable employee business expenses, and other compensation on the  
6 regularly scheduled postpetition pay dates; (b) pay any and all local, state, and federal  
7 withholding and payroll-related taxes relating to prepetition periods, including, but not limited  
8 to, all prepetition withholding taxes, social security taxes, Medicare taxes, and unemployment  
9 taxes; (c) pay all court-ordered wage garnishments, including, but not limited to, child support  
10 and tax garnishments; (d) make accrued prepetition contributions or payments directly on  
11 account of employee benefits; (e) continue to honor, and pay as and when appropriate, earned  
12 but unused vacation and other benefits accrued prepetition; and (f) continue existing employee  
13 benefits postpetition.

14 16. Debtors request that this Court enter an Order requiring Wells Fargo to  
15 honor all electronic transfers and paper payroll checks drawn on NORPAC accounts ending in  
16 9073 and 6125, and Hermiston Foods account ending in 1017 and Quincy Foods account ending  
17 in 1025.

18 **BASIS FOR RELIEF REQUESTED**

19 17. To protect the value of Debtors' business as a going concern, Debtors  
20 must honor their prepetition wage obligations. A failure to pay accrued wages, salaries,  
21 commissions, expenses, benefits, and other related obligations, or even a delay in such payment,  
22 would have a significant negative impact on worker morale and some employees may not report  
23 to work, thereby impairing Debtors' ability to continue operations. Debtors believe the  
24 requested relief will enable them to maintain their current operations without interruption and, at  
25 the same time, maintain worker morale. Debtors' employees are vital to their efforts to  
26 reorganize and provide essential services, without which Debtors would be unable to function.

1 Without the relief requested, Debtors' ability to preserve their assets for the benefit of all  
2 creditors and equity security holders, and Debtors' ability to successfully reorganize, will be  
3 severely impaired.

4 18. It is in the best interests of Debtors and their creditors that the above-  
5 described wages, salaries, compensation, payroll taxes, and employee benefits be paid, for the  
6 reason that such payments will enable Debtors to continue to operate their business in the  
7 ordinary course.

8 19. Pursuant to Rules 6003(b) and 6004(h) of the Federal Rules of Bankruptcy  
9 Procedure ("Bankruptcy Rules"), Debtors seek (a) immediate entry of an order granting the relief  
10 sought herein, and (b) a waiver of any stay of the effectiveness of such an order. Bankruptcy  
11 Rule 6003(b) provides, in relevant part, that "[e]xcept to the extent that relief is necessary to  
12 avoid immediate and irreparable harm, the court shall not, within 21 days after the filing of the  
13 petition, issue an order granting \* \* \* a motion to pay all or part of a claim that arose before the  
14 filing of the petition \* \* \*." Accordingly, where the failure to grant any such requested relief  
15 would result in immediate and irreparable harm to Debtors' estates, the Court may allow Debtors  
16 to pay all or part of a claim that arose before the Petition Date prior to the 21st day following the  
17 Petition Date. Bankruptcy Rule 6004(h) provides that "[a]n order authorizing the use, sale, or  
18 lease of property other than cash collateral is stayed until the expiration of 14 days after entry of  
19 the order, unless the court orders otherwise."

20 20. As set forth above and in the Mar Declaration, payment of the prepetition  
21 wages, salaries, compensation, expenses, benefits, and related taxes is necessary to prevent  
22 immediate and irreparable damage to Debtors' business operations and their ability to operate in  
23 the ordinary course. Accordingly, ample cause exists to justify (a) the immediate entry of an  
24 order granting the relief requested herein, and (b) a waiver of the 14-day stay imposed by  
25 Bankruptcy Rule 6004(h), to the extent it applies.  
26

1 WHEREFORE, Debtors respectfully request that the Court enter an expedited  
2 order, substantially in the form attached hereto as **Exhibit 1**, granting the relief requested in the  
3 Motion and such other and further relief as this Court deems just and proper.

4 DATED this 22nd day of August, 2019.

5 TONKON TORP LLP

6  
7 By /s/ Timothy J. Conway

8 Albert N. Kennedy, OSB No. 821429

9 Timothy J. Conway, OSB No. 851752

10 Michael W. Fletcher, OSB No. 010448

11 Ava L. Schoen, OSB No. 044072

12 Attorneys for Debtors  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26

# **EXHIBIT 1**

## **PROPOSED FORM OF ORDER**



UNITED STATES BANKRUPTCY COURT  
DISTRICT OF OREGON

In re

NORPAC Foods, Inc.,

Debtor.

Case No. 19-62584-pcm11

In re

Hermiston Foods, LLC,

Debtor.

Case No. 19-33102-pcm11

In re

Quincy Foods, LLC,

Debtor.

Case No. 19-33103-pcm11

**ORDER GRANTING DEBTORS'  
MOTION FOR ORDER  
AUTHORIZING PAYMENT OF  
PREPETITION WAGES, SALARIES,  
COMPENSATION, EXPENSES,  
BENEFITS, AND RELATED TAXES;  
AND TO CONTINUE EMPLOYEE  
BENEFITS POSTPETITION**

THIS MATTER having come before the Court upon Debtors' Motion for Order  
Authorizing Payment of Prepetition Wages, Salaries, Commissions, Expenses, Benefits, and

**Page 1 of 3 - ORDER GRANTING DEBTORS' MOTION FOR ORDER AUTHORIZING PAYMENT OF  
PREPETITION WAGES, SALARIES, COMPENSATION, EXPENSES, BENEFITS, AND  
RELATED TAXES; AND TO CONTINUE EMPLOYEE BENEFITS POSTPETITION**

Related Taxes; and to Continue Employee Benefits Postpetition (the “Motion”) [ECF No. \_\_\_\_]; the Court having reviewed the Motion and the Declaration of Winston Mar in Support of First Day Pleadings, and having considered the statements of counsel at a hearing before the Court (the “Hearing”); and the Court having found that (1) the Court has jurisdiction over this matter pursuant to 28 U.S.C. §§ 157 and 1334; (2) venue is proper in this district pursuant to 28 U.S.C. §§ 1408 and 1409; (3) this is a core proceeding pursuant to 28 U.S.C. § 157(b); and (4) notice of the Motion and the Hearing was sufficient under the circumstances; and after due deliberation the Court having determined that the relief requested in the Motion is in the best interests of Debtors, their estates, and the creditors; and good and sufficient cause having been shown; now, therefore,

IT IS HEREBY ORDERED that:

1. Debtors’ Motion is GRANTED.
2. Debtors are authorized (a) to pay incurred prepetition wages, salaries, reimbursable employee business expenses, commissions, and other compensation on the regularly-scheduled postpetition pay dates including, *nunc pro tunc*, the August 23, 2019 pay date; (b) to pay any and all local, state, and federal withholding and payroll-related taxes relating to prepetition periods, including, but not limited to, all prepetition withholding taxes, social security taxes, Medicare taxes, and unemployment taxes; (c) to pay all court-ordered wage garnishments, including, but not limited to, child support and tax garnishments; (d) to make accrued prepetition contributions or payments directly on account of employee benefits; (e) to continue to honor, and pay as and when appropriate, earned but unused vacation and other benefits accrued prepetition; (f) to continue existing employee benefits postpetition; provided, however, that with respect to prepetition obligations, Debtors will not pay with respect to any individual more than the \$12,850 priority amount provided by 11 U.S.C. §§ 507(a)(4) and (a)(5)
3. Wells Fargo Bank, N.A. is hereby ordered and directed to honor all checks or electronic transfers issued for payment of the obligations described above.

4. The requirements of Bankruptcy Rule 6003(b) have been satisfied with respect to the payments authorized by this Order.

5. Pursuant to Bankruptcy Rule 6004(h), this Order shall be immediately effective and enforceable upon its entry.

# # #

I certify that I have complied with the requirements of LBR 9021-1(a).

Presented by:

TONKON TORP LLP

By \_\_\_\_\_  
Albert N. Kennedy, OSB No. 821429  
Timothy J. Conway, OSB No. 851752  
Michael W. Fletcher, OSB No. 010448  
Ava L. Schoen, OSB No. 044072  
888 S.W. Fifth Avenue, Suite 1600  
Portland, OR 97204-2099  
Telephone: 503-221-1440  
Facsimile: 503-274-8779  
E-mail: al.kennedy@tonkon.com  
tim.conway@tonkon.com  
michael.fletcher@tonkon.com  
ava.schoen@tonkon.com  
Attorneys for Debtors

cc: List of Interested Parties